

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SAIO BARZEE,

Plaintiff,

-v-

5:24-CV-1237

AARON M. WILSON, JR., *et al.*,

Defendants.

APPEARANCES:

OF COUNSEL:

SAIO BARZEE

Plaintiff, Pro Se

11001866

Onondaga County Justice Center

555 South State Street

Syracuse, NY 13202

DAVID N. HURD

United States District Judge

ORDER ON REPORT & RECOMMENDATION

On October 9, 2024, *pro se* plaintiff Saio Barzee (“plaintiff”) filed this civil action alleging that defendants violated his rights in a series of incidents that ultimately led to his arrest and criminal prosecution in state court. Dkt. No.

1. Along with his complaint, plaintiff moved for leave to proceed *in forma pauperis* (“IFP Application”). Dkt. Nos. 6, 7.

On November 12, 2024, U.S. Magistrate Judge Mitchell J. Katz granted plaintiff's IFP Application and, following an initial review of the complaint, advised by Report & Recommendation ("R&R") that a few of plaintiff's claims survived initial review but that most were subject to dismissal. Dkt. No. 10.

First, Judge Katz advised that plaintiff's: (1) Eighth Amendment claims; (2) § 1983 claims against defendant Fitzpatrick; and (3) claims for injunctive or declaratory relief should be dismissed with prejudice. Dkt. No. 10.

Second, Judge Katz advised that plaintiff's: (1) Fourteenth Amendment fair-trial claim against defendant P.O. Merdanovic based on his allegedly false report; (2) Fourteenth Amendment fair-trial claim against defendant P.O. Harrington based on his allegedly false testimony in grand jury and at a suppression hearing; and (3) state-law malpractice claim against defendant Susan Carey should survive initial review. Dkt. No. 10.

Third, Judge Katz advised that plaintiff's remaining claims be dismissed without prejudice. Dkt. No. 10. Although Judge Katz explained to plaintiff that he could try to amend these claims if he wanted to, Judge Katz ordered plaintiff to "wait until the District Court rules on this Order and Report-Recommendation before he files any proposed amended complaint." *Id.*

Plaintiff has lodged objections. Dkt. Nos. 14, 15, 16. Very briefly stated, plaintiff argues that the Court should consider certain additional facts and allegations outside the operative pleading. *See id.* That request will be

denied. Upon *de novo* review, Judge Katz's R&R is accepted and will be adopted in all respects. *See* 28 U.S.C. § 636.

Therefore, it is

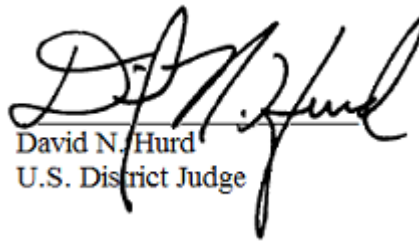
ORDERED that

1. The Report & Recommendation (Dkt. No. 10) is ACCEPTED;
2. Plaintiff's letter requesting to attach exhibits (Dkt. No. 9) is DENIED;
3. The following claims SURVIVE initial review and require a response:
 - (a) Fourteenth Amendment fair-trial claim against defendant P.O. Merdanovic based on his allegedly false report;
 - (b) Fourteenth Amendment fair-trial claim against defendant P.O. Harrington based on his allegedly false testimony in grand jury and at a suppression hearing; and
 - (c) state-law malpractice claim against defendant Susan Carey;
4. Plaintiff's: (1) Eighth Amendment claims; (2) § 1983 claims against defendant Fitzpatrick; and (3) claims for injunctive or declaratory relief are DISMISSED with prejudice; and
5. Plaintiff's remaining claims are DISMISSED without prejudice.

The Clerk of the Court is directed to terminate the pending motions and refer this matter to Judge Katz for further action as appropriate, including service as to the surviving claims and defendants and/or a scheduling order regarding possible amendment to the pleading.

IT IS SO ORDERED.

Dated: December 4, 2024
Utica, New York.



David N. Hurd
U.S. District Judge